

ASSEMBLY BILL

No. 223

Introduced by Assembly Member Sharon Runner

January 29, 2007

An act to amend Sections 3021, 3103.5, and 3110 of the Elections Code, relating to voting.

LEGISLATIVE COUNSEL'S DIGEST

AB 223, as introduced, Sharon Runner. Absentee voting: military service.

(1) Existing law permits a voter, under specified conditions, to request and obtain physical delivery of an absentee ballot to the voter or the voter's authorized representative after the period to request an absentee ballot has expired.

This bill would apply these provisions to a person called for military service.

(2) Existing law permits a special absentee voter, as defined, who is temporarily living outside of the territorial limits of the United States or the District of Columbia, to return his or her ballot by facsimile transmission.

This bill would apply these provisions to a person called for military service within the United States on or after the final date to make application for an absent voter ballot.

(3) Existing law provides that if a special absentee voter is unable to appear at his or her polling place because of being recalled to military service after the final day for making application for an absent voter's ballot, but before 5 p.m. on the day before the day of election, he or she may appear before the elections official and make application for an absent voter's ballot.

This bill would revise these provisions to provide that a special absentee voter may appear before the elections official either in his or her county of registration or in the county in which he or she is recalled to military service to make application for an absent voter's ballot which may be submitted by facsimile or by e-mail or online transmission to be counted, as specified. By increasing the duties of local elections officials, the bill would impose a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3021 of the Elections Code is amended
2 to read:
3 3021. After the close of the period for requesting absent voter
4 ballots by mail any voter unable to go to the polls because of illness
5 or disability resulting in his or her confinement in a hospital,
6 sanatorium, nursing home, or place of residence, or any voter
7 unable because of a physical handicap to go to his or her polling
8 place or because of that handicap is unable to vote at his or her
9 polling place due to existing architectural barriers at his or her
10 polling place denying him or her physical access to the polling
11 place, voting booth, or voting apparatus or machinery, or any voter
12 unable to go to his or her polling place because of *military service*
13 *or* conditions resulting in his or her absence from the precinct on
14 election day may request in a written statement, signed under
15 penalty of perjury that a ballot be delivered to him or her. This
16 written statement shall not be required if the absent voter ballot is
17 voted in the office of the elections official as defined by subdivision
18 (b) of Section 3018, at the time of the request. This ballot shall be
19 delivered by the elections official to any authorized representative
20 of the voter who presents this written statement to the elections
21 official.

Before delivering the ballot the elections official may compare the signature on the request with the signature on the voter's affidavit of registration, but in any event, the signature shall be compared before the absent voter ballot is canvassed.

The voter shall mark the ballot, place it in the identification envelope, fill out and sign the envelope and return the ballot, personally or through the authorized representative, to either the elections official or any polling place within the jurisdiction.

These ballots shall be processed and counted in the same manner as other absentee ballots.

SEC. 2. Section 3103.5 of the Elections Code is amended to read:

3103.5. (a) (1) A special absentee voter who is temporarily living outside of the territorial limits of the United States or the District of Columbia, *or is called for military service within the United States on or after the final date to make application for an absent voter ballot*, may return his or her ballot by facsimile transmission. To be counted, the ballot returned by facsimile transmission must be received by the voter's elections official no later than the closing of the polls on election day and must be accompanied by an identification envelope containing all of the information required by Section 3011 and an oath of voter declaration in substantially the following form:

OATH OF VOTER

I, _____, acknowledge that by returning my voted ballot by facsimile transmission I have waived my right to have my ballot kept secret. Nevertheless, I understand that, as with any absent voter, my signature, whether on this oath of voter form or my identification envelope, will be permanently separated from my voted ballot to maintain its secrecy at the outset of the tabulation process and thereafter.

My residence address is _____.
(Street Address) (City) (ZIP Code)

My current mailing address is _____.

(Street Address) (City) (ZIP Code)

My e-mail address is _____. My facsimile transmission
number is _____.

I am a resident of _____ County, State of California, and I have not
applied, nor intend to apply, for an absentee ballot from any other jurisdiction
for the same election.

I declare under penalty of perjury under the laws of the State of California
that the foregoing is true and correct.

Dated this _____ day of _____, 20_____.

(Signed) _____
voter (power of attorney cannot be accepted)

YOUR BALLOT CANNOT BE COUNTED UNLESS YOU SIGN THE
ABOVE OATH AND INCLUDE IT WITH YOUR BALLOT AND
IDENTIFICATION ENVELOPE, ALL OF WHICH ARE RETURNED
BY FACSIMILE TRANSMISSION.

(2) Notwithstanding the voter's waiver of the right to a secret
ballot, each elections official shall adopt appropriate procedures
to protect the secrecy of absentee ballots returned by facsimile
transmission.

(3) Upon receipt of an absentee ballot returned by facsimile
transmission, the elections official shall determine the voter's
eligibility to vote by comparing the signature on the return
information with the signature on the voter's affidavit of
registration. The ballot shall be duplicated and all materials
preserved according to procedures set forth in this code.

(4) Notwithstanding paragraph (1), a special absentee voter who
is permitted to return his or her ballot by facsimile transmission
is, nonetheless, encouraged to return his or her ballot by mail or
in person if possible. A special absentee voter should return a ballot
by facsimile transmission only if doing so is necessary for the
ballot to be received before the close of polls on election day.

(b) The Secretary of State shall make a recommendation to the
Legislature, no later than December 31, 2008, on the benefits and

1 problems, if any, derived from permitting qualified special absentee
2 voters to return their ballots by facsimile transmission, and shall
3 include in the recommendation the number of ballots returned by
4 facsimile transmission pursuant to this section.

5 (c) This section shall remain in effect only until January 1, 2009,
6 and as of that date is repealed, unless a later enacted statute, that
7 is enacted before January 1, 2009, deletes or extends that date.

8 SEC. 3. Section 3110 of the Elections Code is amended to read:

9 3110. If a special absentee voter is unable to appear at his or
10 her polling place because of being recalled to service after the final
11 day for making application for an absent voter's ballot, but before
12 5 p.m. on the day before the day of election, he or she may appear
13 before the elections official *in the county in which the special*
14 *absentee voter is registered or in the county in which he or she is*
15 *recalled to service* and make application for an absent voter's
16 ballot, *which may be submitted by facsimile, or by e-mail or online*
17 *transmission if the elections official makes the transmission option*
18 *available*. The elections official shall deliver to him or her an
19 absent voter's ballot which may be voted in the elections official's
20 office or voted outside the elections official's office on or before
21 the close of the polls on the day of election and returned as are
22 other absent voter's ballots. *To be counted, the ballot must be*
23 *returned to the elections official's office in person, by facsimile*
24 *transmission, or by an authorized person on or before the close*
25 *of the polls on the day of the election. If the special absentee voter*
26 *appears in the county in which he or she is recalled to service,*
27 *rather than the county to which he or she is registered, the elections*
28 *official shall coordinate with the elections official in the county*
29 *in which the special absentee voter is registered to provide the*
30 *absentee ballot that contains the appropriate measures and races*
31 *for the precinct in which the special absentee voter is registered.*

32 SEC. 4. If the Commission on State Mandates determines that
33 this act contains costs mandated by the state, reimbursement to
34 local agencies and school districts for those costs shall be made
35 pursuant to Part 7 (commencing with Section 17500) of Division
36 4 of Title 2 of the Government Code.